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In re Application of :
Chatterjee et al. :
Application Number: 10/557283 : ON PETITION
Filing Date: 11/30/2006 :
Attorney Docket Number: :
61383(71699) :

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181 filed on November 10, 2008.

The application was held abandoned for failure to timely respond to the Office action requiring restriction and/or election mailed on February 21, 2008. Notice of Abandonment was mailed on September 24, 2008.

Petitioner asserts that the Office action requiring restriction and/or election mailed on February 21, 2008, was not received. Petitioner's counsel states that a search of the file jacket and docket records for the application indicates that the restriction requirement was never received. A copy of counsel's docket report has been enclosed with the petition and is referenced in the petition.

A review of the record reveals that the Office action mailed on February 21, 2008, was returned as undeliverable on February 26, 2008. Further, an inspection of the Office' Image File Wrapper system reveals that a copy of the envelope showing that the Office action was returned is located therein, and the address window in the USPTO envelope appears blank. Accordingly, it is concluded that the Office action was returned as undeliverable because the address was not visible through the address window on the envelope mailed by the USPTO.

As such, the showing of record is that there was an irregularity in the mailing, and the Office action was not received as a result of an Office error. For this reason, the practitioner did not receive the Office action requiring restriction and/or election mailed on February 21, 2008.

Accordingly, there was no abandonment in fact. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.¹

The petition is GRANTED.

No petition fee is due and none has been charged.

The application file is being referred to Technology Center Art Unit 1646 technical support staff for remailing of the Office action requiring restriction and/or election mailed on February 21, 2008. The period for reply will be reset from the mailing date thereof.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3231. Any other questions regarding the status of the application or the examination process should be directed to the Technology Center.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

¹ See MPEP 707.13. If the Office action was mailed to the correct correspondence address and it was addressed to an attorney or agent, a letter along with a copy of the Office action may be sent to the first named inventor or assignee (if available) informing him or her of the returned action. The time period for reply to the Office action will be restarted to run from the mailing date of the letter informing applicant of the returned action. Id.